

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 7514

BILL NUMBER: HB 1788

NOTE PREPARED: Apr 28, 2003

BILL AMENDED: Apr 26, 2003

SUBJECT: Sale of Tobacco.

FIRST AUTHOR: Rep. Hasler

FIRST SPONSOR: Sen. Weatherwax

BILL STATUS: Enrolled

FUNDS AFFECTED: X

X

GENERAL

DEDICATED

FEDERAL

IMPACT: State

Summary of Legislation: (CCR Amended) This bill provides that a cigarette distributor with five consecutive years of good credit standing with the state is not required to post a bond as a condition of paying for revenue stamps within 30 days of the purchase date. It requires a cigarette distributor to include an invoice in each shipment or delivery of cigarettes to a retailer. The bill requires a retailer to keep an invoice for at least two weeks. It authorizes the Department of State Revenue (Department) or the Alcohol and Tobacco Commission (Commission) to impose a civil penalty upon a retailer who fails to produce an invoice or other evidence that cigarettes were purchased from a legitimate distributor. The bill also permits the state to seize undocumented cigarettes.

The bill increases the penalty for selling cigarettes below cost from a Class C to a Class A infraction and deposits monetary judgments in the Commission's Enforcement and Administration Fund. It prohibits smoking on a school bus during a school week or a school activity. The bill renames the Youth Tobacco Education and Enforcement Fund the Richard D. Doyle Youth Tobacco Education and Enforcement Fund. The bill provides that excess escrow payments made in Indiana by a nonparticipating tobacco product manufacturer revert to the nonparticipating tobacco product manufacturer. It requires a tobacco product manufacturer to: (1) certify that it is a participating manufacturer in the Tobacco Master Settlement Agreement or maintain a qualified escrow fund; and (2) list the manufacturer's brand families of cigarettes.

The bill requires the Attorney General to electronically publish a directory of tobacco product manufacturers and brand families and notify a cigarette distributor at least 30 days before the Attorney General removes a tobacco product manufacturer or brand family from the directory. The bill prohibits the Attorney General from restoring a tobacco product manufacturer or brand family to the directory until the tobacco product manufacturer refunds any money due a distributor, stamping agent, or retailer. The bill requires a foreign nonparticipating manufacturer to appoint an agent for service of process. The bill provides that: (1) the Department may revoke or suspend the license of; and (2) the Department or Commission may impose a civil penalty on; a distributor or stamping agent that affixes a stamp on or sells cigarettes of a manufacturer or

brand family that is not listed in the directory. The bill deposits the civil penalties in the Commission's Enforcement and Administration Fund. The bill allows the state to recover the costs of an action to enforce the certification requirements.

Effective Date: July 1, 2003.

Explanation of State Expenditures: *Attorney General's Office:* This bill requires that cigarette manufacturers certify to the Attorney General and the Department of State Revenue (DOR) that they are in compliance with state law and are either participants in the Master Settlement Agreement or make the required deposits into a qualified escrow account. Under this proposal, the Attorney General would maintain an annual listing of cigarette manufacturers who are in compliance and publish the listing on the Access Indiana website. The bill also allows the Attorney General to establish rules associated with the enforcement of cigarette manufacturers' compliance with state law requiring them to either participate in the Master Settlement Agreement or contribute to a qualified escrow account. It is estimated that the Office could cover any costs associated with the bill's provisions using existing staff and resources. Additionally, some of the Office's costs may be offset through fees recovered from persons violating the bill's provisions. The Attorney General's Tobacco Litigation Division consists of two attorneys and a paralegal. The Division's annual operating budget is approximately \$200,000.

Department of State Revenue: This bill would require the Department to develop rules and procedures to assist with the enforcement of tobacco manufacturers' certification and compliance. It is presumed that the Department can absorb any costs associated with the bill.

Alcohol and Tobacco Commission (ATC): This bill would require the Alcohol and Tobacco Commission to enforce the Cigarette Fair Trade Act. The Act is currently administered by the Audit Division of the Department of State Revenue. There are two people in the Department that work with the Act, among other duties. Depending upon the Commission's administration of the duties, the Commission could be required to hire additional staff. This bill does not contain an appropriation.

Explanation of State Revenues: *Penalty Provisions:* The bill requires tobacco retailers to produce documentary evidence at the request of the DOR and the ATC that the retailer obtained tobacco products from a distributor registered under IC 6-7-1-16. The ATC or the DOR may impose a civil penalty of up to 500% of the retail value of cigarettes sold or \$5,000 for each day the retailer fails to produce evidence that the tobacco products were purchased from a registered distributor. Penalties collected under this provision would be deposited in the ATC's Enforcement and Administration Fund (70%) and the state General Fund (30%) for use by the DOR.

The bill makes it a Class C misdemeanor to sell cigarettes from manufacturers not included on the Attorney General's listing of compliant manufacturers. The bill also allows the Attorney General's Office or the Department of State Revenue to impose a civil penalty of up to 500% of the retail value of cigarettes sold or \$5,000 for each violation of this provision. Criminal and civil penalties collected under this provision would be deposited in the ATC's Enforcement and Administration Fund. The maximum penalty for a Class C misdemeanor is \$500. Additionally, a person who sells unlisted cigarette brands commits a deceptive act actionable by the Attorney General. If convicted, the court may order the offender to pay to the state the reasonable costs of the Attorney General's investigation and prosecution related to the action. A court may also order an injunction. If the injunction is violated, a civil penalty of up to \$15,000 may be assessed per violation. If a court finds that a person committed a deceptive act knowingly, the Attorney General may recover a civil penalty of a fine up to \$500 per violation on behalf of the state. If a court determines that a

person has sold cigarettes from an unlisted manufacturer, the bill specifies that the court shall order all gross receipts and other benefits received from the violation deposited in the Tobacco Master Settlement Agreement Fund.

The bill increases the penalty for selling cigarettes at below the state minimum price from a Class C infraction to a Class A infraction. If additional court cases occur, revenue to the state Alcohol and Tobacco Commission's Enforcement and Administration Fund may increase if infraction judgments and court fees are collected. The maximum judgement from a Class A infraction is \$10,000, while the maximum judgement for a Class C infraction is \$500.

The bill also makes smoking in school buses during the school week a Class B infraction. The maximum judgment for a Class B infraction is \$1,000. Any revenue from the judgement would be deposited in the state General Fund.

If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed. 70% of the court fee would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Explanation of Local Expenditures: *Penalty Provisions:* A Class C misdemeanor is punishable by up to 60 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Court Fee Revenue:* If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of State Revenue; Attorney General's Office; Alcohol and Tobacco Commission.

Local Agencies Affected: School Corporations; Trial courts, local law enforcement agencies.

Information Sources: National Association of Attorneys General; Jennifer Thuma, Legislative Liaison, Attorney General's Office, 233-6143.

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